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United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

August 26, 1998

The Honorable Eleanor Hill
Inspector General
Department of Defense
400 Army Navy Drive
Arlington, VA 22202

Mr. Gregory H. Friedman
Acting Inspector General
Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Mr. Richard B. Calahan
Acting Inspector General
Department of Treasury
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The Honorable Jacquelyn Williams-Bridgers
Inspector General
Department of State
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Mr. Johnnie E. Frazier
Acting Inspector General
Department of Commerce
2201 C Street, N.W., Room 6817
Washington, D.C. 20230

Ms. Dawn Ellison
Acting Inspector General
Central Intelligence Agency
Room 2X30 New Headquarters
Washington, D.C. 20505

Dear Inspectors General:

In 1993, the Inspectors General of the Departments of Defense, State, Energy, and Commerce collaborated to conduct an interagency review of the export licensing processes for dual-use and munitions commodities. I am writing to request that you update and expand your work in this important area, particularly in light of testimony the Committee received at a June 25, 1998 hearing. I have included the Inspectors General of Treasury and the CIA in this request because the 1993 interagency report concluded that those agencies played major roles in the licensing process.

On June 25th, the Committee heard from Dr. Peter Leitner, a senior strategic trade advisor in the Defense Technology Security Administration. Dr. Leitner provided an unsettling description of the dual-use review process. I urge you to read the hearing transcript, an unofficial copy of which is enclosed.¹ His testimony raised many specific areas of concern, but he also recounted, drawing on his twelve years of experience in this area, what he views as a general breakdown in our licensing controls:

¹ We request that you use the enclosed unofficial transcript for internal purposes only. We will forward you an official transcript once it is available.

[O]ver the past six years the formal process to control exports of dual-use items has failed its stated mission -- to safeguard the national security of the United States. . . . Through a tireless campaign, the opponents of export controls have managed to destroy the 16 nation Coordinating Committee on Export Controls, decontrol vast arrays of critical military technology, rewire the U.S. domestic export controls process so that it is structurally unsound and unable to safeguard our security, and erect a series of ineffectual domestic regulations and international working groups designed to project a false impression of security, deliberation and cooperation.

(Hearing transcript at pp. 7-8.) Although he took issue with some of Dr. Leitner's specific criticisms, a second hearing witness, Principal Deputy Assistant Secretary of Defense Franklin Miller, told the Committee there was room for improvement in the Department's handling of dual-use applications.

Your 1993 interagency report detailed a number of problems. For example, you described that in nearly a quarter of sampled cases referred for review to Energy by Commerce, the agencies maintained inconsistent information in their respective databases about a given case, a shortcoming which "tends to diminish the credibility of the licensing process." (Report at p. 20.) In addition, you noted that for dual-use licenses that required exporters to document compliance with certain conditions, the government received the required documentation in only four percent of cases sampled. The Commerce Department, moreover, had taken no steps to bring the 96 percent of nonfiling exporters into compliance. (Report at p. 3.)

While I leave it to your judgment to determine how best to examine the dual-use and munitions licensing processes, I ask that in performing the work you address the questions that are listed below. Please do not treat the following list as an exhaustive one; rather, it is suggestive, setting forth some issues arising from the Committee's June 25th hearing:

1. Please examine whether the current, relevant legislative authority contains inconsistencies or ambiguities regarding the licensing of dual-use and munitions commodities, and the effect of any such inconsistencies and ambiguities.
2. Please examine whether Executive Order 12981 (1995) as implemented is consistent with the objectives of the Export Administration Act and other relevant legislative authority.
3. Please determine if there is a continued lack of interagency accord, as stated in your 1993 interagency report (at page 13), regarding whether the Commerce Department is properly referring export license applications (including supporting documentation) out for review by the other agencies.

4. Please determine if the interagency dispute resolution (or "escalation") process for appealing disputed license applications allows officials from dissenting agencies a meaningful opportunity to seek review of such applications, and assess why this process is so seldom used.
5. Please review whether the current dual-use licensing process adequately takes account of the cumulative affect of technology transfers resulting from the export of munitions and dual-use items, and the decontrol of munitions commodities.
6. Please review whether the current munitions licensing process adequately takes account of the cumulative affect of technology transfers resulting from the export of munitions and dual-use items, and the decontrol of munitions commodities.
7. Please determine whether license applications are being properly referred for comment (with sufficient time for responsible review) to the military services, the intelligence community, and other relevant groups (the "recipient groups") by the Defense Department and other agencies. Please consider in particular numerical trends in the frequency of such referrals, trends in the types of applications referred, trends in the nature of the taskings made in connection with the referrals, and the perceptions of officials at the recipient groups.
8. Please determine whether license review officials at each of the agencies are provided sufficient training and guidance relevant for reviewing license applications, and whether more formal training and guidance is warranted. Dr. Leitner noted a paucity of such training and guidance in his Committee testimony. (Hearing transcript at pp. 43-44.)
9. Please review the adequacy of the databases used in the licensing process, such as the Defense Department's FORDTIS, paying particular attention to whether such databases contain complete, accurate, consistent, and secure information about dual-use and munitions export applications.
10. In his testimony, Dr. Leitner described instances where licensing recommendations he entered on FORDTIS were later changed without his consent or knowledge. (Hearing transcript at pp. 46-47.) Please examine those charges, and assess whether such problems exist at your agencies.
11. Please determine whether license review officials are being pressured improperly by their superiors to issue or change specific recommendations on license applications. Dr. Leitner testified about one such incident that happened to him at DTSA. (Hearing transcript at pp. 47-50.)

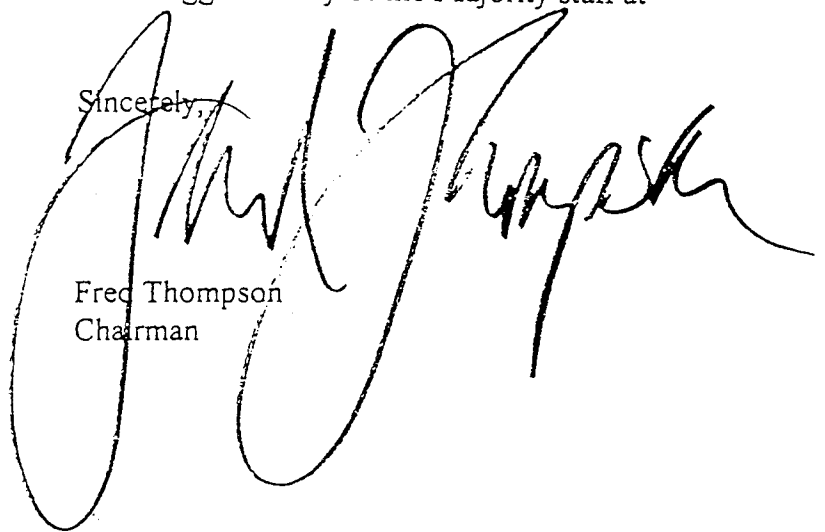
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12. Please determine whether our government still uses foreign nationals to conduct either pre-license or post-shipment licensing activities and whether such a practice is advisable.
13. Please determine whether the agency licensing process leaves a reliable audit trail for assessing licensing performance.
14. Please describe the procedures used by agencies to ensure compliance with conditions placed on export licenses (e.g., no retransfers without U.S. consent, no replications, and peaceful use assurances), and assess the adequacy and effectiveness of such procedures.

I appreciate your prompt attention to this important project. If you need assistance or have questions about the request, please contact Jack Cobb or Maggie Hickey of the Majority staff at (202) 224-4751.

Sincerely,

Fred Thompson
Chairman

A large, stylized handwritten signature in black ink, appearing to read 'Fred Thompson', is written over the typed name and title.

FT/jhc

Enclosure